
(2010) 09 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No. 7854 of 2010 and M.P. No's. 1 and 2 of 2010

K. Krishnamani

APPELLANT

Vs

Corporation of Chennai and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Tamil Nadu Motor Vehicles Rules, 1989 — Rule 2, 247, 379, 379(3), 379(4)

Citation : (2010) 5 CTC 257 : (2011) 2 MLJ 216

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : K. Sudalaikannu, for the Appellant; L.N. Praghasam, for R1, Rajakalifullah, Govt. Pleader, M. Sneha, G.A. for R2 to R5, M. Balachandar, for R6 and R7, A.M. Packianathan Easter, for R9, R. Sankara Narayanan, for R10, V.R. Thangavelu, for R11, Hema Sampath, S. Venkateswar, for R12 and Sathish Parasaran, for R14, for the Respondent

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—By way of this Public Interest Litigation, the petitioner seeks a direction upon respondents 1 to

5 to take action against respondents 6 to 15 for encroaching upon the public road by employing the services of Private Security Agencies and for

utilizing it for the parking of their vehicles, treating it as their own private parking zone.

2. It has been brought to our notice that the extreme margins of the road are being used by the private shop owners for parking their cars along or

that of their customers by putting a rope and earmarking the said space as a private parking zone. The result is that the public at large is deprived

of parking their cars on the margins of the road, unless they are customers of a particular establishment.

3. In the counter affidavit filed by the Chennai Corporation, the details of the

areas where the respondents 6 to 15 park their vehicles, in an unauthorized manner, are mentioned. From the said counter affidavit it is found that a body called Tamil Nadu Ex-Servicemen Corporation is authorized to collect parking charges on behalf of the Corporation.

4. The private respondent Nos. 6, 7 and 9 have filed counter affidavits, the sum and substance of those counter affidavits are that the Corporation of Chennai, is collecting parking fees at the rate of Rs. 450/- per month per car and the cars are parked in front of their office building. The 12th respondent has filed a counter stating that they do not have any parking place and the frontage of their shop is completely blocked by hawkers and other squatters and not even an inch of space is available for parking a cycle.

5. The respondents 2, 3, 4 and 5 have filed a common counter affidavit sworn to by the Additional Commissioner of Police (Traffic). In the counter affidavit it has been stated that certain road side margin is "paid parking area", and the Corporation of Chennai is collecting parking fees and the Traffic Police do not permit any private institution for parking vehicles on roads other than in the designated parking area. It is further stated that when a particular area is declared as a paid parking area, the identity of the parked vehicle will not be noted and therefore the Traffic Police cannot take any action for violation of the Motor Vehicles Act. Further, it is stated that the Police Authorities have not received any complaint from any affected party alleging that they have been threatened by private security agencies.

6. Thus, it is to be noted that in the areas mentioned by the petitioner, certain extent of the road margin has been earmarked as parking area and a fee is levied on the persons who park their vehicles in the paid parking area. Fee is levied by the Corporation and collected through their agents namely Tamil Nadu Ex-Servicemen Corporation Limited, which is a Government of Tamil Nadu undertaking.

7. As could be seen from the counter affidavit filed by the Commissioner of Corporation of Chennai, in so far as the areas near the establishments of the respondents 6 & 9 to 13, parking being done unauthorisedly though there is certain authorised parking place available; in so far as the respondent No. 7 is concerned, it has been stated that the parking is unauthorisedly done by the Bank staff and 8th and 14 respondents are stated

to be parking in authorised parking area on fee being collected by the Corporation. Therefore, the Corporation appears to justify their action by

stating that in the "paid parking area" a consolidated amount is being collected from the respective respondents and the vehicles owned by the said

respondents or their employees or customers are being allowed to be parked in the said area. Photographs have been placed before us to show

that these private respondents have either place placards or tie a rope in the paid parking area and have also written that the said area is

exclusively reserved for them.

8. We fail to understand as to on what basis the private respondents earmark the paid public parking area as if being their exclusive parking area.

Admittedly what is collected by the Corporation is only a fee. Even if fee is collected by the Corporation of Chennai that does not entitle the

private respondents the right to exclusive use the public paid parking area. The right of licensee is clearly circumscribed.

9. The power of the Commissioner of Police in the City of Madras to fix parking place for Motor Cabs is traceable to Rule 247 of the Tamil Nadu

Motor Vehicle Rules (hereinafter referred to as "the Rules") and the Commissioner of Police after consultation with such other authority as they

may deem desirable fix such places at which the Motor Cabs may be parked either indefinitely or for specified period of time and may fix such

places where Motor cabs may stop for a longer time than it is necessary for taking up or setting down of passengers.

10. In terms of Rule 379 of the Rules, the Commissioner of Police may approve the parking places within the Chennai City Limits for the purpose

of parking motor vehicles other than public service vehicles and goods carriages. In terms of sub Rule 2 of Rule 379 of the Act, the Commissioner,

Corporation of Chennai, shall apply to the Commissioner of Police, Chennai, for approval of proposed parking place for such vehicle and such

Application shall be furnished with several particulars as stated in the Rules. Sub-Rule 3 of Rule 379 of the Act deals with the procedure to be

adopted while considering such Applications and after approval, the parking place is notified as required under Sub-rule 4 of Rule 379 of the Act.

Sub-Rule 5 clearly states that no vehicle shall be parked in the parking place for a period beyond one hour. The Inspecting Officers of Police

Department are authorised by the Commissioner of Police to inspect the parking place for any defects and if such defects are brought to the notice

of the Commissioner of Police, he is entitled to revoke such permission granted. Therefore, from the perusal of these Rules, it is clear that no

private person is entitled to exclusive right to park his vehicle in such a notified public parking place as no such reservation is contemplated under

the Rules. Therefore, it has to be held that the collection of lumpsum licensee fee from the private respondents and exclusively earmarking the

notified public parking space for a private persons is illegal.

11. In the light of the above factual and legal position, we dispose of this Writ Petition by directing the respondents 1 to 5 to forthwith take action

and ensure that public paid parking area are available for use as parking area by the general public on payment of such fee as determined and

ensure that the public paid parking area is not exclusively reserved for any private parties and made available to the general public.

12. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.